IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
August 20, 2008 Session

STATE OF TENNESSEE v. THOMAS LEWIS TURNER, II

Interlocutory Appeal from the Circuit Court for Rutherford County
No. F-60192B Don R. Ash, Judge

No. M2008-00482-CCA-R9-CO - Filed February 20, 2009

The defendant, Thomas Lewis Turner, II (hereinafter "Turner"), was indicted for murder in the perpetration of a robbery, premeditated murder, especially aggravated robbery, conspiracy to commit robbery, possession of ecstasy, and possession of marijuana. The trial court granted Turner's motion to suppress his statement to police. Pursuant to Rule 9 of the Tennessee Rules of Appellate Procedure, the State was granted this interlocutory appeal challenging the trial court's suppression of the statement made by Turner during a custodial interrogation. Because Turner did not make an unequivocal request for an attorney during the interrogation, the order of suppression is reversed, and the case is remanded for further proceedings consistent with this opinion.

Tenn. R. App. P. 9 Interlocutory Appeal; Judgment of the Circuit Court Reversed

CAMILLE R. MCMULLEN, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and JAMES CURWOOD WITT, JR., J., joined.

Kerry Knox, Murfreesboro, Tennessee, for the appellee, Thomas Lewis Turner, II.

Robert E. Cooper, Jr., Attorney General and Reporter; Mark A. Fulks, Assistant Attorney General; William C. Whiteshell, Jr., District Attorney General; and J. Paul Newman, Assistant Attorney General, for the appellant, State of Tennessee.

OPINION

Facts. On February 9, 2007, at approximately 9:00 a.m., Turner and a co-defendant were arrested by the Smyrna Police Department for a robbery and murder that took place around midnight the night before. Initially, two officers, with guns drawn, took Turner and the co-defendant into custody. Once the two men were in custody, a total of five to six officers were present at the scene. Turner and the co-defendant were held at the arrest scene for approximately fifteen to twenty minutes before being transported to the police station. At 9:40 a.m., the co-defendant waived his Miranda rights and confessed to his and Turner's involvement in the crimes. Following the co-defendant's confession, Det. Kevin Hodges and Lt. Todd Spearman of the Smyrna Police Department interrogated Turner regarding the robbery and murder. The video, which was an exhibit to the

suppression hearing, reveals that Turner, Det. Hodges, and Lt. Spearman were the only people present during the interrogation, which took place in a small room containing a small table and four chairs, one of which was folded against the wall.

Detective Hodges testified that Turner spent approximately three to four hours in a holding cell before being brought to the interrogation room. He believed that Turner was sleeping in his holding cell prior to being interviewed but was not certain because he was not the one who retrieved Turner from his cell. Detective Hodges stated that he and Lt. Spearman were the officers who interviewed Turner, and he acknowledged that he and Lt. Spearman had a larger build than Turner. During the interrogation, the officers sat a little farther than arm's reach of Turner. Detective Hodges said that Lt. Spearman was not carrying a firearm and that he did not believe he carried a firearm during the interview, although even if he had, it would have been hidden by the wind shirt he was wearing. Detective Hodges said that he did not believe he told Turner that he was a suspect in a murder case during the interview. Turner did not appear lethargic at the time of the interview, and he did not recall Turner saying anything about smoking marijuana the day before the interview. During the interview, Turner told Lt. Spearman that he attended the twelfth grade. Detective Hodges told Turner that "if he had any questions about any of his rights that [he and Lt. Spearman] would explain those to him." When Turner asked if he could stop answering our questions at any time, Det. Hodges told him, "[Y]ep, that is one of your rights and you can do that." Detective Hodges said that Turner appeared "fine" during the interview.

Turner's first statement to Lt. Spearman during the interview was, "Are you my lawyer?" Lieutenant Spearman responded, "No. I'm a police officer." At the time, Lt. Spearman was wearing a shirt with "Smyrna Police" written on the front. Shortly thereafter, Turner asked, "How quick [sic] will my lawyer get here?" Detective Hodges stated that he and Lt. Spearman questioned Turner about whether he had an attorney at the beginning of the interview:

> We asked him if he had an attorney. He said yes. Said okay. And then he turned around and said, "No. Actually I've got prepaid legal service." Went into some banter about probation or something else. And we said, "Hey, if you want an attorney, we can get you one. Or you can talk to us."

Detective Hodges explained that they continued to talk to Turner because "he said he really didn't have an attorney. It was prepaid legal service is [sic] what he had." Turner then said something about his cell phone, which they refused to give to him, and Det. Hodges told him that he could use their telephone. Detective Hodges said that he did not understand Turner's "banter" to mean that he needed an attorney. Turner said something to him about having an attorney but not having met or seen him yet. Turner was held in custody three to four hours prior to his interview, and Det. Hodges did not know if Turner had been permitted to get his cell phone to call an attorney. He also told Turner something like if he did not start talking to them about what happened, then they were going to take the statement of his co-defendant. Detective Hodges said that he was not aware of any statements made by Turner prior to this interview. He also said that he did not talk to Turner at all prior to the interview.

Turner signed a waiver of rights form on February 9, 2007, at 12:05 p.m. Detective Hodges stated that Turner waived his right to counsel prior to a formal interview regarding this case. Turner was able to understand what he was doing when he gave his statement, did not mention ingesting any drugs or alcohol, and did not appear to be under the influence when he gave his statement. Detective Hodges did not witness any coercive conduct or physical abuse and said that there was no yelling, screaming, or drawing of weapons by the officers during the interview. Detective Hodges said that Turner did not unequivocally and unconditionally request an attorney prior to giving his statement. Turner decided to give a statement to Det. Hodges and Lt. Spearman after he had asked about his rights.

Captain Spearman testified that he was a lieutenant and the chief of the detectives in February of 2007 when Turner was interviewed. He said that he sat close enough to Turner during the interview so that they could have a conversation and that the interview room was large enough for four people. Captain Spearman said that he informed Turner why he was there. He did not have a firearm on his person when he interviewed Turner. Turner did not appear to be lethargic or under the influence of any drugs during the interview, and he seemed to understand what he was doing when he made his statement, although he did not specifically ask Turner if he was under the influence of an intoxicant at the time. He did not give Turner any drug tests and was not aware of anyone else in the police department giving him any drug tests. Turner did make an unequivocal request for an attorney at the end of the interview, and he and Det. Hodges abruptly stopped the interview. He did not recall Turner making an unequivocal request for an attorney prior to the time that they stopped the interview. Captain Spearman explained that he stops interviews once an individual makes an unequivocal request for an attorney and that if Turner mentioned anything about an attorney during the earlier stages of the interview, then it was not an unequivocal request for an attorney. He and Det. Hodges went over the Miranda rights waiver with Turner, and then Turner signed the waiver.

The video of the interview corroborates the above testimony and shows the officers advising Turner of his Miranda rights. Turner then requested his cell phone to call his lawyer. The officers declined to provide Turner with his cell phone but offered to allow Turner to use their telephone. Turner then told the officers he had prepaid legal services and did not actually have an attorney. In response, the officers told Turner they believed he was "telling [him] that [Turner] really [didn't] want to talk to [them] right now and [that Turner] would rather speak to an attorney." Turner replied, "I mean, I can talk 'cause I can tell you –." Following this exchange, Turner initialed and signed the admonition and waiver form and then explained his involvement in the robbery and murder for the next hour and twenty minutes without asking about an attorney again. At 1:24:36 p.m., as Det. Hodges was reviewing the facts given by Turner and Lt. Spearman was outside the interview room, Turner said, "Y'all [sic] twisting the story now. Do I need to get a lawyer?" Approximately two minutes later, at 1:26:03 p.m., Turner stated, "Get me a lawyer. And I'm through. Get me a lawyer, and I'll tell the lawyer exactly everything that went down. I had nothing to do with it. I can't afford one. I need a lawyer. 'Cause this is getting out of hand." At that point, Det. Hodges immediately stopped questioning Turner.

On May 8, 2007, Turner was indicted for murder in the perpetration of a robbery, premeditated murder, especially aggravated robbery, conspiracy to commit robbery, possession of ecstasy, and possession of marijuana. On June 19, 2007, Turner filed a pre-trial motion to suppress his confession, asserting that he did not knowingly and voluntarily waive his right to counsel because of his lack of sleep, use of drugs, the delay in being interviewed, and the coercive tactics used by the Smyrna Police Department. On December 21, 2007, Turner filed an amended motion to suppress on the basis that he unequivocally requested counsel. On January 17, 2008, the trial court entered an order granting Turner's motion to suppress on the basis that he made an unequivocal request for counsel:

> After review of the interrogation video tape . . . the Court is of the opinion the Defendant did in fact make an unequivocal request for an attorney, at which time the police did not cease the questions until counsel could arrive. . . .
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> . . . .
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> In this case, the Defendant made various requests for an attorney. He stated:
> 1. "Are you my lawyer?"
> 2. "How quick will my lawyer get here?" at 12:08: on the tape
> 3. "Will my lawyer get here today?"at 12:09: on the tape.
> 4. "Can I get one with no money?" at 12:10:50 on the tape.
> 5. "Defendant asked for his cell phone to retrieve his lawyer's phone number." at 12:12 on tape.
> 6. "Do I need to get a lawyer?" at 1:24:40 on the tape.
> 7. "Get me a lawyer" at 1:26:00 on the tape.
>
> It is this Court's belief not all of the statements are unequivocal requests for an attorney. For instance, questions regarding whether the detective is his attorney, how quick it will take his attorney to arrive, whether his attorney will arrive today, whether he can get an attorney without money, and whether he needs an attorney are all ambiguous requests. However, this Court is of the belief when the Defendant asked the detectives to retrieve his cell phone so he could call his attorney, he was making an unequivocal request for an attorney. This statement, coupled with the entire surrounding circumstances and prior [alluding] to an attorney support this Court's finding the Defendant's statement to the Smyrna Police should be suppressed to the extent the Detectives continued questioning the Defendant after he asked to retrieve his attorney's phone number.

Analysis. The State, as appellant, argues that the record preponderates against the trial court's decision that Turner unequivocally invoked his right to counsel prior to giving his statement. First, the State contends that the suppression order should be reversed because "the trial court reviewed the defendant's many equivocations and concluded that his request for his mobile telephone, the totality of the circumstances, and the defendant's nebulous references to an attorney

constituted an unequivocal request." Second, the State asserts that Turner did not unequivocally request an attorney until approximately one hour into the interview, when the interview was abruptly stopped. Third, the State contends that Turner's request for his cell phone cannot be interpreted as an objective request for counsel and that the trial court is prohibited from considering his subjective intent regarding this request.

In response, Turner contends that the trial court properly granted his motion to suppress because he made an unequivocal request for an attorney. First, he argues that the trial court must consider the "totality of the circumstances" in order to determine whether he knowingly and voluntarily waived his right to counsel before giving his statement to the officers. Second, he claims that the record shows that his statements to Det. Hodges and Lt. Spearman focus on the issue of an attorney and conclude with his request for "his cellular telephone for the purpose of contacting an attorney with whom Turner has had a prior relationship." Third, Turner cites case law from other jurisdictions showing that the request to use a telephone to call a lawyer is considered an unequivocal request for counsel. Fourth, Turner argues the officers had a duty to stop the interview when he asked for his cell phone with his attorney's number and confirmed that he had an attorney. Fifth, Turner contends that this court must consider his very slight involvement with law enforcement and his unfamiliarity with police and interrogation procedures when determining whether to affirm or reverse the trial court's order of suppression.

The courts of this state have concluded that "a trial court's determination at a suppression hearing is presumptively correct on appeal." State v. Saylor, 117 S.W.3d 239, 244 (Tenn. 2003) (citing State v. Harbison, 704 S.W.2d 314, 318 (Tenn. 1986)). However, if the record on appeal preponderates against the trial court's determination, then the presumption of correctness may be overcome. Harbison, 704 S.W.2d at 318 (citing Mitchell v. State, 458 S.W.2d 630, 632 (Tenn. Crim. App. 1970)). The Tennessee Supreme Court explained this standard in State v. Odom:

> Questions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact. The party prevailing in the trial court is entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from that evidence. So long as the greater weight of the evidence supports the trial court's findings, those findings shall be upheld.

State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996).

This court's analysis must begin with the United States Constitution and the Tennessee Constitution. The Fifth Amendment to the United States Constitution, applicable to the states through the Fourteenth Amendment, states that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." Similarly, the Tennessee Constitution states "that in all criminal prosecutions, the accused . . . shall not be compelled to give evidence against himself." Tenn. Const. art. I, § 9. "Encompassed within both of these constitutional provisions is the right to

counsel, which is applicable whenever a suspect requests that counsel be present during police-initiated custodial interrogation."[1] Saylor, 117 S.W.3d at 244. In Miranda v. Arizona, the United States Supreme Court did not outline the requirements to invoke a Fifth Amendment right to counsel; instead, the Court generally stated that the right was invoked when an individual "indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking . . . ." Miranda v. Arizona, 384 U.S. 436, 444-45, 86 S. Ct 1602, 1612 (1966). However, eight years later in Davis v. United States, the United States Supreme Court adopted a significantly narrower standard for invoking a right to counsel under the Fifth Amendment:

> The applicability of the "'rigid' prophylactic rule" of Edwards[2] requires courts to "determine whether the accused actually invoked his right to counsel." To avoid difficulties of proof and to provide guidance to officers conducting interrogations, this is an objective inquiry. Invocation of the Miranda right to counsel "requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney." But if a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect might be invoking the right to counsel, our precedents do not require the cessation of questioning.
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> Rather, the suspect must unambiguously request counsel. As we have observed, "a statement either is such an assertion of the right to counsel or it is not." Although a suspect need not "speak with the discrimination of an Oxford don," he must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney. If the statement fails to meet the requisite level of clarity, Edwards does not require that the officers stop questioning the suspect.

Davis v. United States, 512 U.S. 452, 458-59, 114 S. Ct. 2350, 2355 (1994) (internal citations omitted).

Whenever a suspect invokes his right to counsel, law enforcement must stop questioning until the suspect's attorney is present. Saylor, 117 S.W.3d at 244 (citing Miranda, 384 U.S. at 444-45, 86 S. Ct. at 1612; Edwards, 451 U.S. at 484-85, 101 S. Ct. at 1885; State v. Stephenson, 878 S.W.2d

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[1] However, in Tennessee, the Sixth Amendment "right to counsel attaches when adversary judicial proceedings are initiated." State v. Mitchell, 593 S.W.2d 280, 286 (Tenn. 1980). "Initiation is marked by formal charge, which we construe to be an arrest warrant, or at the time of the preliminary hearing in those rare cases where a preliminary hearing is not preceded by an arrest warrant, or by indictment or presentment when the charge is initiated by the Grand Jury." Id. (footnote omitted). Because Turner's charges were initiated by the Grand Jury through an indictment, only the Fifth Amendment right to counsel is applicable to this case.

[2] Edwards v. Arizona, 451 U.S. 477, 101 S. Ct. 1880 (1981).

530, 548 (Tenn. 1994)). An invocation of the right to counsel may be made "in any manner and at any stage of the process." Miranda, 384 U.S. at 444-45, 86 S. Ct. at 1612. The United States Supreme Court has stated that "a broad, rather than a narrow, interpretation to a defendant's request for counsel" is proper. Connecticut v. Barrett, 479 U.S. 523, 529, 107 S. Ct. 828, 832 (1987) (citing Michigan v. Jackson, 475 U.S. 625, 633, 106 S. Ct. 1404 (1986)). Once the suspect invokes his right to counsel, "any subsequent statement made by a defendant as a result of police-initiated interrogation must be suppressed." State v. Carrie Ann Brewster and William Justin Brewster, No. E2004-00533-CCA-R3-CD, 2005 WL 762604, at *6 (Tenn. Crim. App., at Knoxville, Apr. 5, 2005) (citing Edwards, 451 U.S. at 487, 101 S. Ct. at 1886). Once the right to counsel attaches, only the suspect can initiate further communication with law enforcement. Edwards, 451 U.S. at 484-85, 101 S. Ct. at 1885.

Whether the suspect made an equivocal or unequivocal request for counsel is a question of fact. State v. Farmer, 927 S.W.2d 582, 594 (Tenn. Crim. App. 1996). In Davis, the United States Supreme Court stated that although it is a good policy for law enforcement to clarify whether a suspect has actually asked for an attorney when the suspect's request is ambiguous, it "decline[d] to adopt a rule requiring officers to ask clarifying questions." Davis, 512 U.S. at 461, 114 S. Ct. at 2356. The Court explained, "If the suspect's statement is not an unambiguous or unequivocal request for counsel, the officers have no obligation to stop questioning him." Id. at 461-62, 114 S. Ct. at 2356.

In the 2003 decision of State v. Saylor, the Tennessee Supreme Court clarified the standard for invoking the right to counsel:

> [W]e hold today what we implicitly held in Huddleston: The standard for a valid invocation of the right to counsel is the same under both Article I, Section 9 [of the Tennessee Constitution] and the Fifth Amendment. The accused "must articulate his desire to have counsel present sufficiently clearly that a reasonable [police] officer . . . would understand the statement to be a request for an attorney." Huddleston, 924 S.W.2d at 670 (quoting Davis, 512 U.S. at 459, 114 S. Ct. [at 2355]). If the suspect fails to make such an unambiguous statement, police may continue to question him without clarifying any equivocal requests for counsel. Id. We find the following observation in Davis persuasive:
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> > The Edwards rule–questioning must cease if the suspect asks for a lawyer–provides a bright line that can be applied by officers in the real world of investigation and interrogation without unduly hampering the gathering of information. But if we were to require questioning to cease if a suspect makes a statement that might be a request for an attorney, this clarity and ease of application would be lost. Police officers would be forced to make difficult judgment calls about whether the suspect in fact wants a lawyer even though he [has not] said so, with the threat of suppression if they guess wrong.

Id., 512 U.S. at 461, 114 S. Ct. 2350 (emphasis in original); see also State v. Owen, 696 So.2d 715, 719 (Fla.1997) (discussing Davis).

Saylor, 117 S.W.3d at 246 (internal footnote omitted).

Here, the State contends that Turner's statements, which culminated with his request for his cell phone, do not constitute an unequivocal request for an attorney. We agree. We conclude that the record preponderates against the trial court's decision to suppress Turner's statement. Turner's ambiguous references to an attorney do not constitute an unequivocal request for an attorney. The central issue for our review in this case, as noted by both parties at oral argument, is whether Turner invoked his right to counsel when he requested to use his cell phone. The video of the interview revealed the following exchange:

> Lieutenant Spearman: Let me – I will make this a little more simple for you. We wish to ask you questions. We wish to ask you questions about some stuff that happened. According to this, you have a right to have a lawyer present, okay. That's your option. You know, do you want a lawyer present right now? Just yes or no.
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> Turner: If I could afford one?
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> Detective Hodges: It's not up to whether you can afford one or not.
>
> Turner: Oh, I can get one rather or not?
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> Detective Hodges: Yes, sir.
>
> Turner: And he can come today?
>
> Lieutenant Spearman: If you got one that you can call.
>
> Turner: Can I? My phone – my phone is right there in that little envelope. Can you go get it for me?
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> Detective Hodges: Okay, well, I'll tell you what. If – we've got a phone that you can use if you want.
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> Turner: I mean, the number is in my cell phone. My lawyer.
>
> Detective Hodges: So you already have an attorney then?
>
> Turner: Yeah.
>
> Lieutenant Spearman: Who?

Turner: Uh (eleven second pause when Turner takes a sip of his soda). Well, actually, I never met him. But it's through prepaid legal. My lawyer – I never met him. I – I needed him for my court case, but it turns out I didn't have the money to pay him so I ended up having to take the charge or whatever.

Detective Hodges: Okay, basically this – what – what you're telling me is that you really don't want to talk to us right now and you would rather speak to an attorney.

Turner: I mean, I can talk 'cause I can tell you –

Detective Hodges: Well, I don't want to force anything you don't want to do, okay. I am not here to do that.

Turner: (inaudible)

Detective Hodges: Well, I mean – it's one of them two-way streets. Either you want to talk to me and we will sit down and talk or you don't.

Lieutenant Spearman: Or, you want an attorney. It's that simple.

Detective Hodges: It's very that – that simple.

Turner: Alright, I'll talk to you.

Following this exchange, Turner talked to Det. Hodges and Lt. Spearman about his involvement in the case and did not mention the issue of an attorney again until approximately an hour and twenty minutes into the interview. Under the circumstances in this particular case, we decline to conclude that the aforementioned excerpt from Turner's interview constituted an unequivocal request for an attorney. Viewing the interview as a whole, no reasonable officer in this situation would understand Turner's statements regarding his cell phone to be an unconditional and unequivocal request for counsel. Therefore, the officers were under no obligation to stop asking Turner questions. In fact, the officers in this case went above and beyond what is required by Tennessee law when they attempted to clarify whether Turner was actually invoking his Fifth Amendment right to counsel. Moreover, immediately after this equivocal request for counsel, Turner made the comment, "I mean, I can talk." Then Det. Hodges and Lt. Spearman attempted to clarify his request for counsel a second time, and Turner quickly responded, "Alright, I'll talk to you."

Furthermore, the record indicates that Turner intended to talk to the officers without an attorney. The video of the interview makes it apparent that Turner wanted to have an opportunity to convince the detectives that he was innocent. When it became obvious that he was not going to convince them of his innocence, Turner quickly and unequivocally requested counsel. The record shows that in his initial discussion with Det. Hodges and Lt. Spearman, he understood that he could have an attorney appointed, regardless of his ability to pay. When he finally and unequivocally invoked his right to counsel, he clearly stated, "Get me a lawyer, and I'll tell the lawyer exactly everything that went down. I had nothing to do with it. I can't afford one."

Turner cites one unpublished Tennessee case, State v. Ernest Jay Walker, that predates the Tennessee Supreme Court's decision in Saylor by ten years. State v. Ernest Jay Walker, No. 03C01-9110-CR-00346, 1993 WL 44195, at *1 (Tenn. Crim. App., at Knoxville, Feb. 22, 1993). In Walker, the defendant did not want to discuss the murder of the victim during his first interview with police. Id. at *1. At that point, an officer tried to convince him to talk about the crime anyway. Id. at *1-2. Then the officer told the defendant that his co-defendant had hired an attorney and offered to call that attorney for him, which he declined. Id. at *2. At the conclusion of the first interview, the defendant told the officer that he would talk to the co-defendant's attorney at another time to seek advice. Id. Between the first interview and the second interview, both the defendant and the officer who first interviewed him had separate conversations with the co-defendant's attorney, wherein the attorney told both that he had a conflict of interest. Id. At the second interview, the defendant told the officer that he knew his co-defendant's attorney could not represent him. Id. Then the officer asked if there was another attorney he wanted to call, and the defendant said that there was not. Id. During this second interview, the defendant made several inculpatory statements. Id. at *3. The trial court suppressed the defendant's statement because the conversations between the defendant and the attorney and between the officer and the attorney constituted an invocation of the defendant's right to counsel. Id. at *4. In affirming the trial court's decision to suppress in Walker, this court reasoned:

> [T]he trial court made no finding regarding the defendant's waiver of his right to remain silent. It, instead, found that the defendant invoked his right to counsel before the police-initiated second meeting and that the police were barred from initiating further contact with the defendant without counsel present, even if the defendant had occasion to contact counsel before the second meeting. We hold that the record supports the trial court's findings and that the conclusions reached were proper.

Id. at *6. Ultimately, the court concluded that Walker had invoked his right to counsel:

> By the defendant's refusal to discuss the case in the first meeting and his statement that he would be talking with Mr. Tollison to seek some advice, the police were advised of the defendant's desire for the assistance of counsel. Further, when the police verified that the defendant had talked to Mr. Tollison, they were aware of the defendant's active attempt to obtain the assistance of counsel, but that Mr. Tollison was unable to represent the defendant. We view these circumstances as reflecting that the defendant invoked his right to counsel which brought into play the prophylactic rule of Edwards and required the police to refrain from initiating further contact with the defendant directed toward obtaining a statement until counsel was obtained and present.

Id. at *7. Clearly, in Walker, the accused invoked his right to remain silent, indicated he was going to talk to an attorney, and then did, in fact, talk to an attorney. These facts are in marked contrast to the instant case, in which Turner never invoked his right to remain silent and never used the resources available to him to contact an attorney or have an attorney appointed. The officers gave Turner an opportunity to clarify whether he was, in fact, requesting an attorney no less than eight times during the interview, and Turner failed to invoke his right to counsel each of these times.

Accordingly, we conclude that Walker does not shed light on the case at hand.

Turner also cites several cases from other jurisdictions for the proposition that the request to use a telephone to call a lawyer is considered a unequivocal request for counsel. Obviously, none of these cases have precedential value because they are not from Tennessee. Additionally, we note that the Tennessee Supreme Court has not adopted the view that a request for a telephone to contact an attorney necessarily constitutes an invocation of the right to counsel. Finally, we reiterate that the rule in Tennessee is that "the accused 'must articulate his desire to have counsel present sufficiently clearly that a reasonable [police] officer would understand the statement to be a request for an attorney.'" Saylor, 117 S.W.3d at 246 (citations omitted). Accordingly, based on the current law in Tennessee, we conclude that Turner's request for his cell phone to contact an attorney does not constitute an unequivocal request for counsel.

However, even if we consider the cases cited by Turner from other jurisdictions, we note that none contain a fact pattern similar to the one in the instant case. In perhaps the strongest of his cited cases, United States v. Taft, an officer told the two accused individuals, "[Y]ou may want to speak with an attorney to discuss this matter first," and one accused stated, "Yeah, let's do that." Later, the same accused asked, "Well, when we get down to the office, can we call–use your phone to call an attorney?" United States v. Taft, 769 F. Supp. 1295, 1301 (D. Vt. 1991). In Taft, the issue was whether the request to call an attorney on the telephone at the station constituted an unequivocal request for counsel. Id. at 1303. Here, Turner was denied the use of his cell phone but was given the option to use the telephone at the police station, which he declined. The State argues, and we agree, that Det. Hodges and Lt. Spearman had ample reasons not to allow Turner to use his cell phone, including the possibility that Turner could destroy evidence on his cell phone or attempt to communicate with other individuals involved in the crimes. Therefore, on this basis, the instant case can easily be distinguished from the Taft case. In the next case cited by Turner, Silva v. Estelle, the defendant was absolutely denied the opportunity to use the telephone to call his attorney. Silva v. Estelle, 672 F.2d 457, 458-59 (5th Cir. 1982). In Turner's third case, Robinson v. Borg, the accused asked for a telephone several times before being allowed to call his mother, during which he failed to mention the need for an attorney. Robinson v. Borg, 918 F.2d 1387, 1389-90 (9th Cir. 1990). Here, in contrast to Silva and Robinson, the officers made a telephone readily available to Turner, but he refused to use it. When Turner was given several opportunities to talk to an attorney, he determined that he would talk to the officers instead. In the fourth case cited by Turner, Kirby v. Senkowski, the accused asked to call an attorney and had, in fact, already spoken with his lawyer prior to giving his statements, which was deemed by the court to be an invocation of the right to counsel. Kirby v. Senkowski, 141 F. Supp. 2d 383, 397 (S.D.N.Y. 2001). In Turner's fifth case, United States v. Porter, the accused made a telephone call to information to get the phone number for his attorney and a telephone call to his attorney's office where he left a message for his attorney. United States v. Porter, 764 F.2d 1, 6-7 (1st Cir. 1985). The court in Porter found that the accused's attempt to call his lawyer was an invocation of his right to counsel. Id. at 6. In contrast to Kirby and Porter, Turner never actually contacted an attorney at all, even though he was given the opportunity. Aside from the fact that these five cases have no precedential value, they also substantially differ from the facts of this case. Accordingly, we do not find them persuasive.

Conclusion. We conclude that Turner did not make an unequivocal request for an attorney

when he requested his cell phone and that he knowingly and voluntarily waived his Fifth Amendment right to counsel. After considering the aforementioned law and the record in its entirety, the order of suppression is reversed, and the case is remanded for further proceedings consistent with this opinion.

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CAMILLE R. McMULLEN, JUDGE